

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CONVOLVE, INC.

vs.

DELL, INC., ET AL

§
§
§
§
§

CASE NO. 2:08-CV-244-CE

ORDER

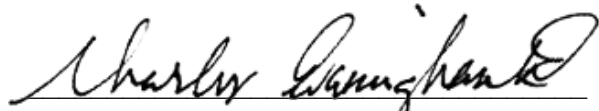
Pending before the court is defendants Hitachi Global Storage Technologies Inc. and Hitachi LTD.'s (collectively "Hitachi") motion for summary judgment of noninfringement of U.S. Patent No. 6,314,473 (the "'473 Patent") (Dkt. No. 337). Hitachi argues that it is entitled to summary judgment that: (1) Hitachi's accused hard disk drives that do not support AAM cannot infringe the '473 Patent; (2) Hitachi's accused hard disk drives do not directly infringe the '473 Patent because they do not met the "user interface" limitation; (3) Hitachi has not induced or contributed to infringement of the '473 Patent, and therefore, as a matter of law, Hitachi cannot be held liable for indirect infringement of the '473 Patent.

First, Hitachi has identified thirty-five families of accused hard disk drives that do not support AAM. Plaintiff Convolve, Inc. ("Convolve") has conceded that the infringement theories and opinions expressed in its infringement report do not cover hard disk drives that: (1) do not have an ATA interface; or (2) are not capable of changing the seek operation in response to AAM commands. Furthermore, in its sur-reply, Convolve represented that it has removed the thirty-five product families identified by Hitachi that do not support AAM from its most recent amended complaint and infringement contentions. Based on these representations, the court DENIES Hitachi's motion for summary judgment as to drives that do not support AAM as moot.

With regard to Hitachi's other grounds for summary judgment, having carefully reviewed the parties' arguments, the court concludes that a genuine issue of material fact exists as to whether the ATA interface is a "user interface." As such, the court DENIES Hitachi's motion for summary judgment of no direct infringement. Furthermore, considering the evidence Convolv presented in opposition to Hitachi's motion and drawing all reasonable inferences in favor of Convolv, the court concludes that genuine issues of material fact exist as to whether Hitachi has induced and/or contributed to infringement of the '473 Patent. Accordingly, the court DENIES Hitachi's motion for summary judgment of no indirect infringement.

In conclusion, the court DENIES Hitachi's motion for summary judgment of noninfringement in its entirety.

SIGNED this 12th day of July, 2011.


CHARLES EVERINGHAM IV
UNITED STATES MAGISTRATE JUDGE